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UNITED STATES DISTRICT COURT

10

DISTRICT OF NEVADA

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MGM MIRAGE OPERATIONS, INC., a
 Nevada corporation,

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Plaintiff,

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v.

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SUSANA GONZALES, an individual, and
 SMART ANSWER S.A., an unknown business
 entity;

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Defendants.

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CASE NO.

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

- (1) Cybersquatting
under 15 U.S.C. § 1125(d)
- (2) Trademark Infringement
under 15 U.S.C. § 1114
- (3) Unfair Competition
under 15 U.S.C. § 1125(a)
- (4) Trademark Dilution
under 15 U.S.C. § 1125(c)
- (5) State Trademark Infringement
under N.R.S. § 600.420
- (6) State Trademark Dilution
under N.R.S. § 600.435
- (7) Common Law Trademark Infringement
- (8) Deceptive Trade Practices
under N.R.S. § 598.0903, *et seq.*
- (9) Intentional Interference with
Prospective Economic Advantage

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For its complaint, MGM MIRAGE Operations, Inc. alleges the following.

NATURE OF THE CASE

This is an action for cybersquatting, trademark infringement, unfair competition, and trademark dilution under federal statutes, with pendent state and/or common law claims for trademark infringement, trademark dilution, deceptive trade practices, and intentional interference with prospective economic advantage. Plaintiff seeks damages, attorneys' fees, costs, and preliminary and permanent injunctive relief.

JURISDICTION AND VENUE

8 1. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C.
9 §§ 1331 and 1338(a). This Court has supplemental jurisdiction over Plaintiff's state and common
10 law claims pursuant to 28 U.S.C. § 1337(a).

11 2. This Court has personal jurisdiction over Defendants based upon the following:

12 (a) Defendants operate a website on the Internet that is accessible to residents of the State of

13 Nevada; (b) Defendants' website is interactive in that it seeks to obtain information from web

14 users; (c) Defendants' website is interactive in that it allows web users to gamble online; and

15 (d) Defendants have committed tortious acts that Defendants knew or should have known would

16 cause injury to a Nevada resident in the State of Nevada.

17 3. Venue is proper in the United States District Court for the District of Nevada under
18 28 U.S.C. §§ 1391(b) and 1391(c). Venue lies in the unofficial Southern division of this Court.

PARTIES

20 4. Plaintiff MGM MIRAGE Operations, Inc. is a Nevada corporation with its
21 principal place of business in Las Vegas, Nevada. Plaintiff has been authorized to protect and
22 enforce the trademarks owned by New Castle Corp. (the “Trademark Owner”).

23 5. Upon information and belief, Susana Gonzales is an individual residing and doing
24 business in the Republic of Panama.

25 6. Upon information and belief, Smart Answer S.A. is an unknown business entity
26 doing business in the Republic of Panama.

1 7. Upon information and belief, Susana Gonzales and Smart Answer S.A. are each the
2 alter ego of the other, and are the officer, agent, servant, representative, and/or employee of the
3 other, acting in participation with the other, having authority or apparent authority to bind the
4 other.

ALLEGATIONS COMMON TO ALL COUNTS

6 8. "Excalibur" is a famous destination resort hotel casino located on the world-famous
7 "Las Vegas Strip" in Las Vegas, Nevada.

8 9. Since the property opened in 1990, the Trademark Owner has continuously used
9 the EXCALIBUR trademarks in connection with advertising and promoting the property in the
10 United States and around the world. The Trademark Owner has spent substantial sums of money
11 to advertise and promote the EXCALIBUR trademarks in print, broadcast media, and on the
12 Internet through the Excalibur web site accessible throughout the United States and around the
13 world at <excaliburlasvegas.com> and <excalibur-casino.com>, among others. A true and
14 accurate copy of the home page for the Excalibur website is attached hereto as Exhibit 1, and is
15 incorporated by this reference. In addition, the Trademark Owner has made extensive use of the
16 EXCALIBUR trademarks on, among other things, signage, wearing apparel, souvenirs and
17 promotional materials.

18 10. The EXCALIBUR name and logo are service marks that are owned by the
19 Trademark Owner and registered on the Principal Register of the United States Patent and
20 Trademark Office, including, among many others:

- 21 a. EXCALIBUR: Registration No. 1,659,163 for hotel services, and
22 b. EXCALIBUR: Registration No. 1,549,563 for casino services.

23 11. These federal trademark registrations have not been abandoned, canceled, or
24 revoked. Moreover, these federal registrations have become incontestable through the filing of
25 Section 8 and 15 affidavits in the Patent and Trademark Office.

1 12. Based on its federal trademark registrations and extensive use, the Trademark
 2 Owner owns the exclusive right to use the EXCALIBUR trademarks in connection with hotel,
 3 casino and related services.

4 13. The EXCALIBUR trademarks have become distinctive and famous in the United
 5 States and around the world for resort hotel and casino services.

6 14. On or about May 18, 2008, Defendants registered the <excaliburlasvegas.org>
 7 Internet domain name with MyDomain, Inc., a domain name registrar. The
 8 <excaliburlasvegas.org> domain name contains the EXCALIBUR Marks coupled with the words
 9 “las vegas,” which identify the location of the Trademark Owner’s resort hotel casino.

10 15. Some time after registration, Defendants linked the <excaliburlasvegas.org>
 11 domain name to an online gambling website entitled “Golden Casino.” A true and accurate copy
 12 of the “Golden Casino” home page of the website is attached hereto as Exhibit 2, and is
 13 incorporated herein by this reference.

14 16. When the web user types in the <excaliburlasvegas.org> domain name, which is
 15 linked to the “Golden Casino” website, it appears as if the <excaliburlasvegas.org> domain name
 16 is somehow associated or, affiliated with, and/or sponsored by “Golden Casino” when it is not.

17 17. Defendants have not registered and used the <excaliburlasvegas.org> domain name
 18 in good faith.

19 18. By registering and using a domain name containing the EXCALIBUR Marks,
 20 Defendants were and are attempting to trade on the goodwill of the Trademark Owner.

21 19. By registering and using a domain name containing the EXCALIBUR Marks, and
 22 by linking the same to an online gaming website, Defendants were and are attempting to create an
 23 association between the <excaliburlasvegas.org> domain and the Trademark Owner.

24 20. By registering and using the <excaliburlasvegas.org> domain name, Defendants
 25 were and are attempting to frustrate or divert Internet traffic intended for the Trademark Owner.
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COUNT I
(Cybersquatting)
Under The Lanham Act, 15 U.S.C. § 1125(d))

21. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

22. Defendants have registered, trafficked in, and/or used a domain name that is confusingly similar to and/or dilutive of the EXCALIBUR Marks, which were distinctive and/or famous at the time Defendants registered the <excaliburlasvegas.org> domain name.

23. Upon information and belief, Defendants have or have had a bad faith intent to profit from the EXCALIBUR Marks.

24. As a direct and proximate result of such conduct, Plaintiff and the Trademark Owner have suffered, and will continue to suffer, monetary loss and irreparable injury to their business, reputation, and goodwill.

COUNT II
(Trademark Infringement
Under The Lanham Act, 15 U.S.C. § 1114)

25. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

26. Defendants have used and/or are using in commerce the <excaliburlasvegas.org> domain name, which contains the EXCALIBUR Marks, and, thus, Defendants' domain name is confusingly similar to the Trademark Owner's trademarks.

27. Defendants' use in commerce of the EXCALIBUR Marks and/or a mark confusingly similar to the EXCALIBUR Marks in the <excaliburlasvegas.org> Internet domain name and Defendants' directing the same to an online gambling website, constitutes a reproduction, copying, counterfeiting, and colorable imitation of the Trademark Owner's trademarks in a manner that is likely to cause confusion or mistake or that is likely to deceive consumers.

28. By using the EXCALIBUR Marks and/or a mark confusingly similar to the EXCALIBUR Marks with the knowledge that the Trademark Owner owns and has used, and

continues to use, its trademarks in Las Vegas, Nevada, across the United States, and around the world, Defendants have intended to cause confusion, cause mistake, or deceive consumers.

29. Defendants are using a mark that is the same and/or confusingly similar to the EXCALIBUR Marks in connection with the sale, offering for sale, or advertising of services in a manner that is likely to cause confusion or mistake, or to deceive consumers as to an affiliation, connection, or association with the Trademark Owner, or as to the origin, sponsorship, or approval of Defendants' services or commercial activities by Plaintiff and the Trademark Owner.

30. Defendants are also using a mark that is the same and/or confusingly similar to the EXCALIBUR Marks in the <excaliburlasvegas.org> domain name to cause initial interest confusion and to divert Internet users away from the Trademark Owner's website.

31. Defendants' use of the EXCALIBUR Marks and/or a mark confusingly similar to the EXCALIBUR Marks has created a likelihood of confusion among consumers who may falsely believe that Defendants' business or the online gambling website, to which the <excaliburlasvegas.org> domain name is linked, is associated with the "Excalibur" resort hotel casino or that Plaintiff and the Trademark Owner sponsors or approves of Defendants' services or commercial activities.

32. As a direct and proximate result of Defendants' infringement, Plaintiff and the Trademark Owner have suffered, and will continue to suffer, monetary loss and irreparable injury to their business, reputation, and goodwill.

COUNT III
(Unfair Competition
Under The Lanham Act, 15 U.S.C. § 1125(a))

33. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

34. Defendants' use in commerce of a mark that is the same and/or confusingly similar to the EXCALIBUR Marks in connection with Defendants' <excaliburlasvegas.org> domain name constitutes a false designation of origin and/or a false or misleading description or representation of fact, which is likely to cause confusion, cause mistake, or deceive as to affiliation, connection,

or association with the Trademark Owner, or as to the origin, sponsorship, or approval of Defendants' services or commercial activities by the Trademark Owner.

35. Defendants' use in commerce of the EXCALIBUR Marks and/or a mark confusingly similar thereto with the knowledge that the Trademark Owner owns and has used, and continues to use, its trademarks, constitutes intentional conduct by Defendants to make false designations of origin and false descriptions about Defendants' services and commercial activities.

36. As a direct and proximate result of such unfair competition, Plaintiff and the Trademark Owner have suffered, and will continue to suffer, monetary loss and irreparable injury to their business, reputation, and goodwill.

COUNT IV

Trademark Dilution

Under The Federal Trademark Dilution Act, 15 U.S.C. § 1125(c))

37. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

38. The EXCALIBUR Marks are inherently distinctive. Through their adoption and consistent and extensive use, the EXCALIBUR Marks have acquired fame.

39. Defendants began using a mark that is the same and/or nearly identical to the EXCALIBUR Marks in connection with Defendants' <excaliburlasvegas.org> Internet domain name after the EXCALIBUR Marks became famous.

40. Defendants' use of the EXCALIBUR Marks and/or a mark confusingly similar thereto has and will cause dilution of the distinctive quality of the Trademark Owner's trademarks and will otherwise cause irreparable injury to its business, reputation, and goodwill.

41. Upon information and belief, Defendants' use of the EXCALIBUR Marks and/or a mark confusingly similar thereto was willful in nature, in that Defendants willfully intended to trade on the reputation of the Trademark Owner or to cause dilution of the EXCALIBUR Marks.

42. As a direct and proximate result of Defendants' dilution of the EXCALIBUR Marks, Plaintiff and the Trademark Owner have suffered, and will suffer, irreparable injury to their business, reputation, and goodwill.

COUNT V
(State Trademark Infringement
Under N.R.S. 600.420)

43. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

44. Defendants have used and/or are using the <excaliburlasvegas.org> domain name, which contains the EXCALIBUR Marks, without Plaintiff's or the Trademark Owner's consent.

45. Defendants' use in commerce of EXCALIBUR Marks and/or a mark confusingly similar to the EXCALIBUR Marks in its <excaliburlasvegas.org> Internet domain name and redirecting the same to an online gambling website, constitutes a reproduction, copying, counterfeiting, and colorable imitation of the Trademark Owner's trademarks in a manner that is likely to cause confusion or mistake or that is likely to deceive consumers.

46. By using the EXCALIBUR Marks and/or a mark confusingly similar to the EXCALIBUR Marks with the knowledge that the Trademark Owner owns and has used, and continues to use, its trademarks in Las Vegas, Nevada, Defendants have intended to cause confusion, cause mistake, or deceive consumers.

47. Defendants are using a mark that is the same and/or confusingly similar to the EXCALIBUR Marks in connection with the sale, offering for sale, or advertising of services in a manner that is likely to cause confusion or mistake, or to deceive consumers as to an affiliation, connection, or association with the Trademark Owner, or as to the origin, sponsorship, or approval of Defendants' services or commercial activities by Plaintiff and the Trademark Owner.

48. Defendants are also using a mark that is the same and/or confusingly similar to the EXCALIBUR Marks in the <excaliburlasvegas.org> domain name to cause initial interest confusion and to divert Internet users away from the Trademark Owner's website.

49. Defendants' use of the EXCALIBUR Marks and/or a mark confusingly similar to the EXCALIBUR Marks has created a likelihood of confusion among consumers who may falsely believe that Defendants' business or the online gambling website to which Defendants linked the <excaliburlasvegas.org> domain name is associated with the "Excalibur" resort hotel casino or

that Plaintiff and the Trademark Owner sponsor or approve of Defendants' services or commercial activities.

50. As a direct and proximate result of Defendants' infringement, Plaintiff and the Trademark Owner have suffered, and will continue to suffer, monetary loss and irreparable injury to their business, reputation, and goodwill.

COUNT VI
(State Trademark Dilution
Under N.R.S. § 600.435)

51. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

52. The EXCALIBUR Marks are inherently distinctive. Through their adoption and consistent and extensive use, the EXCALIBUR Marks have acquired fame in the State of Nevada.

53. Defendants began using a mark that is the same and/or confusingly similar to the EXCALIBUR Marks in connection with Defendants' services, associated online gambling website, and Internet domain name after the EXCALIBUR Marks became famous in the State of Nevada.

54. Defendants' use of the EXCALIBUR Marks and/or marks confusingly similar thereto has and will cause dilution of the distinctive quality of the Trademark Owner's trademarks and will otherwise cause irreparable injury to the Trademark Owner's business, reputation, and goodwill.

55. Upon information and belief, Defendants' use of the EXCALIBUR Marks and/or marks confusingly similar thereto was willful in nature in that Defendants intended to cause dilution of the EXCALIBUR Marks or willfully intended to trade on the Trademark Owner's reputation.

56. As a direct and proximate result of Defendants' dilution of the EXCALIBUR Marks, Plaintiff and the Trademark Owner have suffered, and will suffer, irreparable injury to their business, reputation, and goodwill.

COUNT VII

(Common Law Trademark Infringement)

57. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

58. By virtue of having used and continuing to use the EXCALIBUR Marks, the Trademark Owner has acquired common law trademark rights in the EXCALIBUR Marks.

7 59. Defendants' use of a mark the same and/or confusingly similar to the
8 EXCALIBUR Marks infringes the Trademark Owner's common law trademark rights in its
9 EXCALIBUR Marks and is likely to cause confusion, mistake, or deception among consumers
10 who will believe that Defendants' services, the associated online gambling website and/or Internet
11 domain name originate from, or are affiliated with, or are endorsed by Plaintiff and the Trademark
12 Owner, when, in fact, they are not.

13 60. As the direct and proximate result of Defendants' infringement of the Trademark
14 Owner's common law trademark rights under Nevada and other common law, Plaintiff and the
15 Trademark Owner have suffered, and will continue to suffer, monetary damages and irreparable
16 injury to their business, reputation, and goodwill.

COUNT VIII
(Deceptive Trade Practices
Under N.R.S. § 598.0915)

19 61. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth
20 herein.

21 62. Upon information and belief, in the course of conducting business, Defendants
22 knowingly made false representations as to an affiliation, connection, and/or association with the
23 Trademark Owner by using a mark identical and/or confusingly similar to the EXCALIBUR
24 Marks, and otherwise engaged in deceptive trade practices.

25 63. As the direct and proximate result of Defendants' deceptive conduct, Plaintiff and
26 the Trademark Owner have suffered, and will continue to suffer, monetary damages and
27 irreparable injury to their business, reputation, and goodwill.

COUNT IX (Intentional Interference With Prospective Economic Advantage)

64. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

65. Upon information and belief, at the time Defendants adopted and began using a mark that is the same and/or confusingly similar to the EXCALIBUR Marks, and since that time, Defendants knew and have known that the Trademark Owner is in the business of providing resort hotel casino services, and that the Trademark Owner advertises those services on the Internet using the EXCALIBUR Marks.

66. Upon information and belief, Defendants committed acts intended or designed to disrupt the Trademark Owner's prospective economic advantage arising from providing those services.

67. Defendants' actions have disrupted or are intended to disrupt the Trademark Owner's business by, among other things, diverting web users away from the Trademark Owner's website and to the online gambling website Defendants linked to the <excaliburlasvegas.org> domain name.

68. Defendants have no legal right, privilege or justification for this conduct.

69. As a direct and proximate result of Defendants' intentional interference with the Trademark Owner's prospective economic advantage, Plaintiff and the Trademark Owner have suffered, and will continue to suffer, monetary damages and irreparable injury.

70. Based on the intentional, willful and malicious nature of Defendants' actions, Plaintiff and the Trademark Owner are entitled to recover monetary damages, exemplary or punitive damages and reasonable attorneys' fees and costs incurred in connection with this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court grant the following relief:

A. A preliminary and permanent injunction prohibiting Defendants, Defendants' agents, servants, employees and/or all persons acting in concert or participation with Defendants,

1 from: (1) using the EXCALIBUR Marks or confusingly similar variations thereof, alone or in
2 combination with any other letters, words, letter strings, phrases or designs, in commerce or in
3 connection with any business or for any purpose whatsoever (including, but not limited to, on
4 websites, in domain names, in hidden text and metatags); and (2) registering or trafficking in any
5 domain names containing the EXCALIBUR Marks or confusingly similar variations thereof, alone
6 or in combination with any other letters, words, phrases or designs.

7 B. A preliminary and permanent injunction requiring the current domain name
8 registrar to transfer the <excaliburlasvegas.org> domain name to Plaintiff;

9 C. An award of compensatory, consequential, statutory, exemplary, and/or punitive
10 damages to Plaintiff in an amount to be determined at trial;

11 D. An award of interest, costs and attorneys' fees incurred by Plaintiff in prosecuting
12 this action; and

13 E. All other relief to which Plaintiff is entitled.

14 DATED: November 6, 2008.

15 LEWIS AND ROCA LLP

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MGM Mirage Operations, Inc. v. Gonzales, et al.
EXHIBIT 1 TO COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

MGM Mirage Operations, Inc. v. Gonzales, et al.
EXHIBIT 1 TO COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

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MGM Mirage Operations, Inc. v. Gonzales, et al.
EXHIBIT 2 TO COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

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EXHIBIT 2 TO COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES



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Excalibur Las Vegas

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Excalibur Las Vegas hotel and casino is alive with entertainment that will satisfy the tastes and styles of the whole family. From casino and gaming for adults to underwater sea adventures with SpongeBob Squarepants for the kids.

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